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Patent Application Number: 10/077,988

US PATENT & TRADEMARK  
OFFICE

Attorney Docket Number: BTH-1.2005

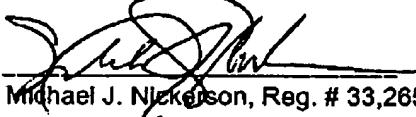
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US PATENT & TRADEMARK  
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**Certificate of Facsimile Transmission**

I hereby certify that the correspondence listed below is being facsimile transmitted to the United States Patent and Trademark Office, on December 21, 2005 to telephone number 571-273-8300

Date December 21, 2005

  
Michael J. Nickerson, Reg. # 33,265

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

**APPLICANT:** Patrick R. CONNELLY et al. **GROUP:** 3762

**SERIAL NO:** 10/077,988 **EXAMINER:** S. Getzow

**FILED:** February 19, 2002 **Confirmation:** 5092

**FOR: ELECTROMAGNETIC INTERFERENCE IMMUNE TISSUE  
INVASIVE SYSTEM**

**Commissioner for Patents**  
PO Box 1450  
Alexandria, Virginia 22313-1450

**Sir:**

**Petition for Refund under 37 C.F.R. 1.26 & 37 C.F.R. 1.28**

The Applicants respectfully request that the Honorable Commissioner refund the excessive Issue Fee (\$700) paid on October 13, 2005.

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**STATEMENT OF FACTS**

- 1) Effective June 30, 2005, the Assignee, **Biophan Technologies, Inc.**, of the entire interest of the above-identified application entered into a license agreement with an entity. This entity does not meet the small entity size standards set forth in 13 C.F.R. 121.801 through 121.805 to be eligible for reduced patent fees.
- 2) The license agreement of June 30, 2005 does not assign, grant, convey, or license any rights in the invention set forth in the above-identified application to the above-mentioned entity.
- 3) The license agreement of June 30, 2005 does not place the Assignee of the entire interest of the above-identified application under any obligation, under contract or law, to assign, grant, convey, or license any rights in the invention set forth in the above-identified application to the above-mentioned entity.
- 4) When paying the large entity Issue Fee (\$1400) on October 13, 2005 for the above-identified application, the undersigned interpreted the small entity definition under 37 C.F.R. 1.27 as being determined on an Assignee basis, instead of an application-by-application basis, when the Assignee of the entire interest of the application meets the small entity size standards set forth in 13 C.F.R. 121.801 through 121.805 to be eligible for reduced patent fees.
- 5) Subsequent to paying the large entity Issue Fee (\$1400) on October 13, 2005 for the above-identified application, the undersigned received clarification from the Small Business Administration Indicating that small entity status is determined on an application-by-application basis when the Assignee of the entire interest of the application meets the small entity size standards set forth in 13 C.F.R. 121.801 through 121.805 to be eligible for reduced patent fees.

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6) Concurrently with this Petition, the undersigned has filed, on behalf of the Assignee of the entire interest of the above-identified application and the Applicants, a written assertion claiming small entity status.

**DISCUSSION**

As set forth above, the Applicants, on October 13, 2005, paid the large entity Issue Fee (\$1400) for the above-identified application.

The Applicants paid this large entity fee because the undersigned interpreted the small entity definition under 37 C.F.R. 1.27 as being determined on an Assignee basis, when the Assignee of the entire interest of the application meets the small entity size standards set forth in 13 C.F.R. 121.801 through 121.805 to be eligible for reduced patent fees, instead of an application-by-application basis.

Moreover, the Applicants paid this large entity fee because the Applicants did not desire to continue the claim of small entity status should the undersigned's interpretation that small entity definition under 37 C.F.R. 1.27 required a determination on an Assignee basis when the Assignee of the entire interest of the application meets the small entity size standards set forth in 13 C.F.R. 121.801 through 121.805 to be eligible for reduced patent fees be correct.

Subsequent to the Applicants paying the large entity Issue Fee (\$1400) for the above-identified application, the undersigned received clarification from the Small Business Administration indicating that small entity status is determined on an application-by-application basis when the Assignee of the entire interest of the application meets the small entity size standards set forth in 13 C.F.R. 121.801 through 121.805 to be eligible for reduced patent fees.

Based upon this clarification, the above-identified application qualifies for reduced patent fees.

More specifically, the Assignee of the entire interest of the above-identified application has not assigned, granted, conveyed, or licensed, and is under no obligation under contract or law to assign, grant, convey, or license, any rights in the invention set forth in the above-identified application, to any person, concern, or organization which

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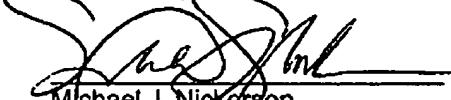
would not qualify for small entity status as a person, small business concern, or nonprofit organization.

Moreover, the Assignee of the entire interest of the above-identified application meets the small entity size standards set forth in 13 C.F.R. 121.801 through 121.805 to be eligible for reduced patent fees.

For all the foregoing reasons, the Applicants respectfully submit that the above-identified application is entitled to small entity status. Furthermore, for all the foregoing reasons, the Applicants respectfully submit that the above-identified application is entitled to certain reduced patent fees.

**Therefore, the Applicants respectfully request that the excessive Issue Fee of \$700 paid on October 13, 2005 be refunded and credited to Deposit Account Number 50-2737.**

Respectfully submitted,



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MJN/mjn

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DEC 21 2005 Attorney Docket Number: BTI-1

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**Sir:**

**Claim for Small Entity Status under 37 C.F.R. 1.27**

The Applicants for the above-identified application respectfully request that the above-identified application be entitled to small entity status, entitling the above-identified application to certain reduced patent fees.

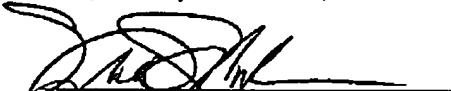
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The Assignee, Biophan Technologies, Inc., of the entire interest of the above-identified application respectfully submits that the Assignee of the entire interest of the above-identified application has not assigned, granted, conveyed, or licensed, and is under no obligation under contract or law to assign, grant, convey, or license, any rights in the invention set forth in the above-identified application, to any person, concern, or organization which would not qualify for small entity status as a person, small business concern, or nonprofit organization.

Moreover, the Assignee of the entire interest of the above-identified application respectfully submits that the Assignee of the entire interest of the above-identified application meets the small entity size standards set forth in 13 C.F.R. 121.801 through 121.805 to be eligible for reduced patent fees.

Therefore, the Assignee of the entire interest of the above-identified application respectfully submits that the above-identified application is entitled to small entity status, and thus, the above-identified application is entitled to certain reduced patent fees.

Respectfully submitted,



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